IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2527 of 2001
with
CIVIL APPLICATION NO. 5788 OF 2001

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VINODKUMAR AMRUTLAL MODI

Versus

HARGOVANDAS RANCHHODDAS MEHTA

Appearance:
1. First Appeal No. 2527 of 2001
MR AJ SHASTRI for Petitioner No. 1
MR BK OZA for Respondent No. 1

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE H.K.RATHOD

Date of decision: 31/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

FIRST APPEAL NO. 2527 OF 2001.

1. Heard.

2. Admit. Mr. B.K.Oza, learned counsel for respondent waives service and accepts the notice of admission.

3. It is jointly stated by learned counsel appearing for the parties that in the trial Court, the suit was decided ex-parte and the defendant had not filed written statement nor cross-examined the plaintiff's witnesses or lead any evidence. It is stated by Mr.B.K.Oza, learned counsel for the respondent that since the suit has been decided ex-parte, an opportunity be granted to the appellant - original defendant to contest the suit by remanding the suit to the trial Court for deciding on merits on condition that the appellant - original defendant shall deposit the principal amount i.e. Rs.60,000/- within the time that may be granted by the Court.

4. In view of the above, the appeal is allowed. The impugned decree and judgement passed on 24.2.2000 in Special Civil Suit No. 682 of 1993 by the learned 3rd Joint Civil Judge (S.D.), Surat, is set aside and the suit is remanded to the trial Court for decision afresh on merits on the condition that the appellant - original defendant shall without prejudice to his rights and contentions in the suit deposit Rs.60,000/- within six weeks from today.

5. It will be open to the trial Court to pass appropriate orders if request is made by the respondent original plaintiff in the suit for withdrawal of the amount that may be deposited by the appellant original defendant.

6. Since the Special Civil Suit No. 682 of 1993 is fairly old by now, the trial Court shall dispose of the said suit as expeditiously as possible, preferably within a period of six months from today.

CIVIL APPLICATION NO. 5788 OF 2001.

In view of the order passed in First Appeal No.2527 of 2001, this Civil Application does not survive.

Hence, disposed of accordingly. Rule is discharged.

(N.G.Nandi,J.)

(H.K.Rathod,J.)

(vipul)